



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/590,611

08/24/2006

Artjom Lutkov

66126(70301)

2252

21874

7590

06/17/2010

EDWARDS ANGELL PALMER & DODGE LLP

P.O. BOX 55874

BOSTON, MA 02205

EXAMINER

BAKER, LORI LYNN

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

06/17/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/590,611	Applicant(s) LUTKOV, ARTJOM	
	Examiner Lori Baker	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-26, 28 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-26 and 30-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/3/10 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

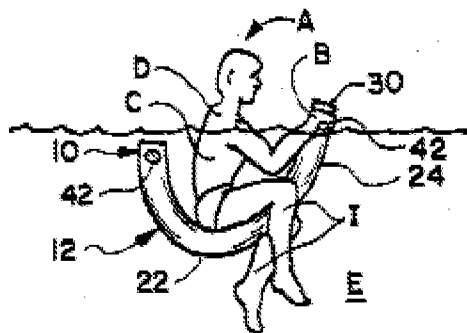
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 18-24, 26, 28, 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beasley (US Patent 4768774) in view of Halsworth (US Patent 6949035). Beasley discloses a device comprising an elongated body 12 extending in a longitudinal direction, the body having at least two handles 14 to accommodate a limb (see figures 4, 6-7) the body can be elastically flexed (see figure 3 @ 90 degree arrows), the body having respective ends 30 where the handles are attached via transverse borings 28 (see figure 2). As to claim 19, see figures 4-8. As to claim 20, see column 3, line 32. As to claims 21-24, the material is closed-cell foam, having a cylindrical shape and rounded, circular

Art Unit: 3764

cross-section. As to claim 26, see figure 1. As to claims 31-32, see claim 18. As to claims 34-35, see proximate lead line 32. Beasley discloses all of the limitations of the invention except for the handle being formed by a hoop and/or loop, the handles separately attached, a tube inserted through the body in the borings and the dimensions of the body. Thus, Halsworth teaches a device having a body 412 with a transverse boring 424 and handle 418 in the form of a hoop (see figure below) and where the handles are attached separately (see figures 15-16) and a tube 422 inserted through the body in the boring, the hoop made from a cushioning material (cord, column 4, line 19). As to the dimensions of the body, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dimensions of Beasley in order to accommodate the different sized users and, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Beasley:



Halsworth:

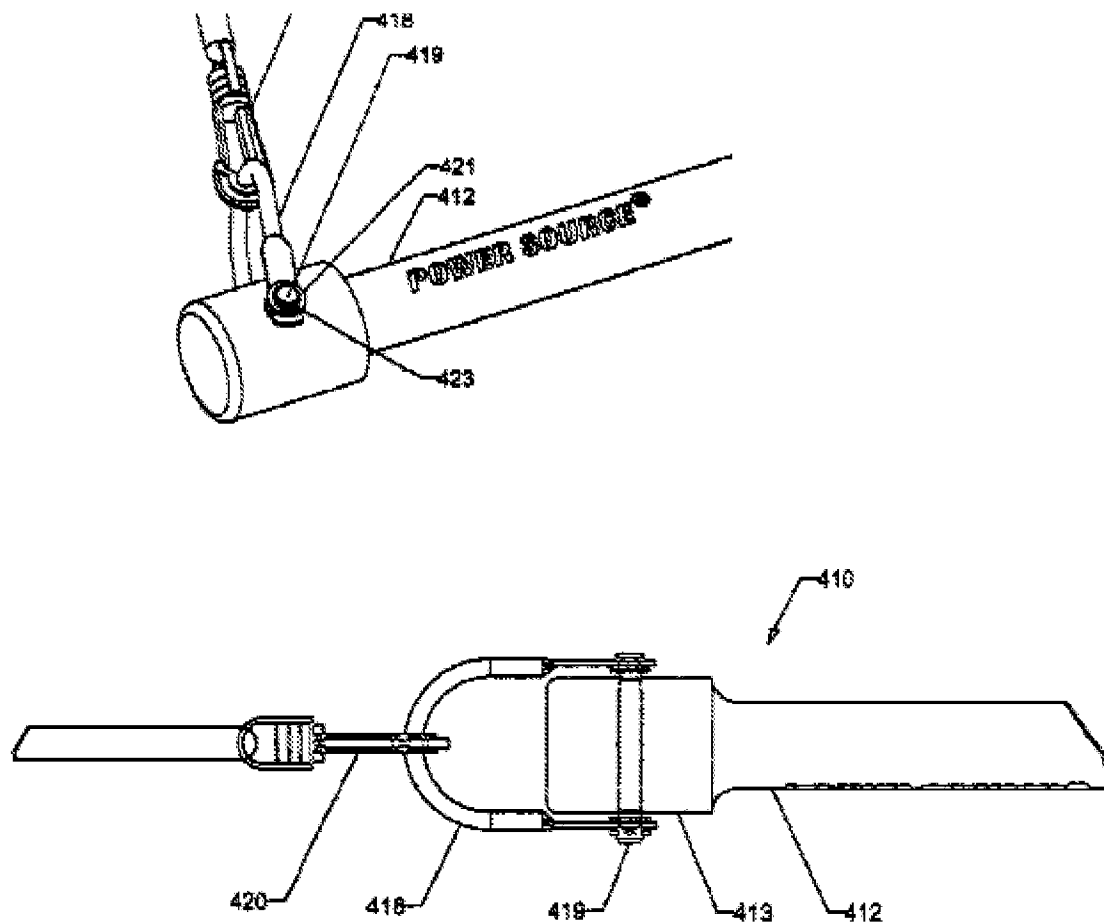


Fig. 15

b. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beasley and Halsworth in view of Ladin (US Patent 5697792). Beasley discloses all of the limitations of the invention except for the color indication. Thus, in an analogous art, Ladin teaches a color indicator. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Beasley in view of the teaching of Ladin such that a color indicator for swimming and other aquatic purposes provides instant feedback for urgent situations while

Art Unit: 3764

in use and because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

c. Claims 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beasley and Halsworth and further in view of Malynowsky (US Patent 5399139). Beasley discloses all of the limitations of the invention except for at least one standing holder, into which the elongated body is inserted. Thus, Malynowsky teaches a stand 14, 15 to which the device can be inserted. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Beasley and Halsworth in view of the teaching of Malynowsky such that a stand provides support to the device while in use and because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the similar prior art on Form 892. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker whose telephone number is (571) 272-4971. The examiner can normally be

Art Unit: 3764

reached on M-F, 8am-5pm. For interview requests, please contact the examiner directly and submit PTO Form 413A.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lori Baker/
Primary Examiner, Art Unit 3764